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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,987	03/24/2004	David A. Orbits	40062.9 IUSC1	6801
7590 09/23/2008 Attention of Joshua W. Korver MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903				
EXAMINER				
ABEL JALIL, NEVEEN				
ART UNIT		PAPER NUMBER		
2165				
MAIL DATE		DELIVERY MODE		
09/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/808,987

**Applicant(s)**

ORBITS ET AL.

**Examiner**

NEVEEN ABEL JALIL

**Art Unit**

2165

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 4, 18-21, 25 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-4, 18-21, 25, and 27-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### **Remarks**

1. The amendment filed on June 26, 2008 has been received and entered. Claims 1, 3, 4, 18-21, 25 and 27-31 are now pending.
2. Applicant's amendment has overcome the previously imposed 35 USC 112, second rejection.

#### ***Claim Objections***

3. Claims 21 and 25 are objected to because of the following informalities:  
  
Claim 21, line "and amount" appears to be a typo since it should state "an amount".  
  
Appropriate correction is required.  
  
Claim 25, line 4, the recitation of "configured for" should be replaced with "configured to". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3, 4, 18-21, 25 and 27-31 are rejected under 35 U.S.C. 102(c) as being anticipated by McGuire et al. (U.S. Patent No. 6,493,871 B1)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(c). This rejection under 35 U.S.C. 102(c) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As to claim 1, McGuire et al. discloses a computer-implemented method of replicating data using a manifest file, comprising:

creating a manifest file at a first member, the manifest file including an identifier of each of a plurality of resources of a resource group that exists at the first member, wherein the manifest file mandates that each of the plurality of resources of the resource group exist on a second member before granting access to any of the plurality of resources of the resource group (See column 4, lines 15-36);

generating a change order on the first member, wherein the change order includes an indicator that the change order is associated with a manifest file (See column 12, lines 42-67, wherein it is suggested that "a manifest file is replaced with "said manifest file")

transmitting the change order to the second member (See column 12, lines 42-67);

identifying, from the indicator, that the change order is associated with the manifest file;

causing the manifest file to be reproduced at the second member (See column 4, lines 15-36, wherein “manifest file” is read on “installation/update package”);

in response to the manifest file being reproduced at second member, beginning a replication operation wherein the replication operation includes a transfer duration during which each of the plurality of resources of the resource group are received on the second member (See column 10, lines 4-23); and

during the transfer duration (See column 7, lines 30-42):

identifying whether each resource identified in the manifest file exists at the second member by comparing each resource of the resource group identified in the manifest file to a database that identifies resources of the second member (See column 8, lines 51-67);

when each resource of the resource group identified in the manifest file does not exist at the second member, preventing access to all resources of the group identified in the manifest file regardless of whether any resources of the group exists on the second member (See column 12, lines 42-67 and see column 14, lines 42-67); and

only when each resource of the resource group identified in the manifest file does exist at the second member, updating the system registry to include all the resources of the resource group (See column 14, lines 42-67).

As to claim 3, McGuire et al. discloses wherein the identifier of each resource of the resource group includes a version identifier associated with the resource (See column 7, lines 8-20).

As to claim 4, McGuire et al. discloses wherein identifying whether each resource of the resource group exists at the second member includes comparing the version identifier of the resource with another version identifier associated with another copy of the resource stored at the second member (See column 14, lines 12-28).

As to claims 18, and 25, McGuire et al. discloses a computer readable storage medium having compute executable instructions that facilitates a replication of data using a manifest file, comprising:

receiving a change order on a second member wherein the change order includes an indicator that the change order is associated with a manifest file, wherein the manifest file includes an identifier of each of a plurality of resources of a resource group that exists at a first member, wherein the manifest file mandates that each of the plurality of the resources of the resource group exist on a second member before granting access to any of the plurality of resources of the resource group (See column 14, lines 42-67, and see column 15, lines 1-4);

identifying, from the indicator, that the change order is associated with the manifest file (See corresponding rejections in claim 1 above);

causing the manifest file to be reproduced at the second member (See corresponding rejections in claim 1 above);

in response to the manifest file being reproduced at second member, beginning a replication operation wherein the replication operation includes a transfer duration during which each of the plurality of resources of the resource group are received on the second member (See corresponding rejections in claim 1 above); and

during the transfer duration (See corresponding rejections in claim 1 above):

identifying whether each resource identified in the manifest file exists at the second member by comparing each resource of the resource group identified in the manifest file to a database that identifies resources of the second member (See corresponding rejections in claim 1 above);

when each resource of the resource group identified in the manifest file does not exist at the second member, preventing access to all resources of the group identified in the manifest file regardless of whether any resources of the group exists on the second member (See corresponding rejections in claim 1 above); and

when each resource of the resource group identified in the manifest file does exist at the second member, providing access to all the resources of the resource group (See corresponding rejections in claim 1 above).

As to claim 19, McGuire et al. discloses wherein the manifest file further comprises a globally unique identifier for each resource of the resource group (See column 9, lines 10-24, wherein a version is considered to be a form of globally unique identifier).

As to claim 20, McGuire et al. discloses wherein the manifest file further comprises version identifier for each resource of the resource group (See column 9, lines 10-24).

As to claim 21, McGuire et al. discloses wherein the manifest file includes an expiration identifier that identifies an amount of time for replicating each resource of the resource group

(See column 13, lines 6-24, wherein it is inherent that time is an attribute of transfer that is of concern and can easily be measured).

As to claim 27, McGuire et al. discloses wherein the second member is configured to replicate the manifest file by fetching the manifest file (See column 13, lines 6-24).

As to claim 28, McGuire et al. discloses wherein the second member is configured to mark the change order as handled and store the change order in an outbound log (See column 10, lines 44-67).

As to claim 29, McGuire et al. discloses wherein the second member is further configured to disseminate the change order to a third member (See column 15, lines 5-15, wherein its inherent in a networked server client environment, multiple clients can receive the update package).

As to claim 30, McGuire et al. discloses wherein the manifest file includes an execution order (See column 10, lines 44-67).

As to claim 31, McGuire et al. discloses wherein the manifest file includes a security token (See column 9, lines 30-32).

***Response to Arguments***



6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. For complete list of cited relevant art, see PTO-form 892.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chace can be reached on 571-272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neveen Abel-Jalil  
Primary Examiner  
September 21, 2008  
/Neveen Abel-Jalil/  
Examiner, Art Unit 2165